IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

O R D E R

1. Ruda Ram & another Vs. Ibrahim & others

S.B. CIVIL REVISION PETITION No. 98/2007 against the order dated 14.5.2007 passed by the Rajasthan Wakf Tribunal, Jaleb Chowk, Jaipur in Application No.95/2005.

Date of Order :: May 25, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Prem Krishna Sharma for the petitioners.

BY THE COURT:

REPORTABLE

1. This revision is directed against the order passed by the Rajasthan Wakf Tribunal, Jaipur U/s.83(9) of the Wakf Act, 1995 on an application filed by plaintiff under Order 39 Rule 7 CPC and Section 151 CPC whereby the said Tribunal directed Commissioner Mr. Vasi Mohammed Ansari, Advocate to visit the disputed site and submit a factual report before the court.

2. Learned counsel for the petitioners- defendant submits that the Commissioner could not have been appointed by the Tribunal to collect the evidence. Hence this revision petition.

3. The powers of revision with the High Court conferred U/s.83(9) of the Wakf Act, 1995 are as under:

> "83(9)No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:
>
> Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit."

4. Order 39 Rule 7 CPC permits the trial court to make an order for the detention, preservation or inspection of any property which is the subject matter of such suit as to which any question may arise therein.

5. Section 115 CPC as amended by Act No.46 of 1999 w.e.f. 1.7.2002 by insertion of a proviso U/s.115(1) of CPC now provides that no revision would lie unless the impugned order if passed in favour of the revision petitioner would have finally disposed of the suit or other proceedings. This is what the Hon'ble Supreme Court has also laid down in Shiv Shakti's case in 2003.

6. There is no reason why the same analogy should not be applied to the revision petition filed to this Court U/s.83(9) of the Wakf Act, 1995. The contention of learned counsel for the petitioner that the said Act is a special enactment, therefore, amendment of Section 115 CPC cannot be applied to revision petitions U/s.83(9) of the Wakf Act, 1995, has no legal foundation. The fact that the application was filed with reference to Order 39 Rule 7 read with Section 115 CPC and even otherwise, it appears to be more logical to hold that provisions of CPC can be mutatis mutandis applied to revision petitions filed U/s.83(9) of the Wakf Act, 1995, which power is akin to power of revision U/s.115 CPC. The judgment relied upon by the learned counsel in **Union of India & anr. Vs. M/s. Kripal Industries** [AIR 1998 Raj. 224] to the effect that where the claim of possession over the disputed property of the plaintiff was denied by the defendant in written statement, the Court held that the appointment of Commissioner for making enquiry about fact of possession in dispute was improper and the same could be adjudicated upon by framing issues and recording evidence, is not applicable because the said judgment was rendered by this Court in the year 1998 prior to amendment of CPC w.e.f. 1.7.2002. Admittedly in the present case the impugned order passed otherwise in favour of the present petitioner would not have decided the suit finally, therefore, this revision petition

cannot be held to be maintainable.

7. Therefore, in view of the amendment of CPC which, in the opinion of this Court, applies mutatis mutandis to revision petitions filed U/s.83(9) of the Wakf Act, 1995 also this revision petition is held to be not maintainable and the same is accordingly dismissed.

(Dr.VINEET KOTHARI),J.

VS/